

ORIGINAL

PROB. 12B
(7/93)

United States District Court

for the

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUL 06 2007

at 2 o'clock and 40 min. P.M.
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: LAMASI SUA

Case Number: CR 01-00358DAE-01

Name of Sentencing Judicial Officer: The Honorable David Alan Ezra
U.S. District Judge

Date of Original Sentence: 3/18/02

Original Offense: DISTRIBUTION OF COCAINE BASE WITHIN 1,000 FEET OF A
PUBLIC PLAYGROUND, in violation of 21 U.S.C. §§ 841(a)(1) and
860(a), a Class B felony

Original Sentence: Fifteen (15) months imprisonment followed by six (6) years
supervised release with the following special conditions: 1) That
the defendant shall participate in a substance abuse program,
which may include drug testing at the discretion and direction of the
Probation Office; 2) That the defendant is prohibited from
possessing any illegal or dangerous weapons; 3) Without the prior
approval of the Probation Office, the defendant shall not enter the
"Operation Weed and Seed" target area which is bordered by
Lunalilo Freeway, Nuuanu Avenue, Bethel Street, Nimitz Highway,
North King Street, Dillingham Boulevard, and Kokea Street, as
depicted in the map attached to this Judgment; and 4) That the
defendant provide the Probation Office access to any requested
financial information.

Type of Supervision: Supervised Release

Date Supervision Commenced: 5/23/03

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

General Condition:

That the defendant shall refrain from any unlawful use
of a controlled substance. The defendant shall
submit to one drug test within 15 days of the
commencement of supervision and at least two drug
tests thereafter but no more than eight valid drug

tests per month during the term of supervised release (mandatory condition).

Special Condition No. 1: That the defendant shall participate in and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Special Condition No. 5: That the defendant shall perform up to 50 hours community service as instructed by the Probation Office.

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
General Condition	That on 2/16/07, the offender was arrested by the Honolulu Police Department (HPD) for conduct constituting Operating a Vehicle Under the Influence of an Intoxicant (DUI), in violation of Hawaii Revised Statutes §§ 291E-0061.
Standard Condition No. 11	The offender failed to report the DUI arrest to the Probation Office within 72 hours of being arrested on 2/16/07.
Standard Condition No. 7	The offender admitted that he consumed alcohol to excess, as evidenced by his Blood Alcohol Content of .138 percent.

On 5/10/07, we conducted a criminal records check that revealed that on 2/16/07, the offender was arrested by HPD for DUI and Driving Without a License. When questioned on 5/14/07, the offender initially denied having been arrested by HPD. On 5/23/07, however, he recanted his statement and admitted that he was in fact arrested by HPD on 2/16/07 for DUI. In explanation for not timely reporting the arrest to the Probation Office, the offender stated that he was confused and afraid about the decision to notify the Probation Office of the arrest. He stated that things are going well for him at home, he has a healthy relationship with his common-law wife and children, he has a stable residence, he has had stable employment with the same company for more than a year, and he has not used illicit drugs. He stated that he regrets making the decision to drive a vehicle under the influence of alcohol without thinking about the consequences. The offender stated that on 2/15/07, he went to a bar establishment with co-workers and consumed a few alcoholic beverages. He admitted that he consumed alcohol to excess. He stated that his supervisor was intoxicated and unable

to drive home. He drove her to her home in Kailua. While operating the vehicle in Kailua, he was stopped and arrested by HPD on 2/16/07 for DUI.

According to the police reports, on 2/16/07 at approximately 1:15 a.m., HPD officers observed the offender and a female passenger in a vehicle at a stop light on Hamakua Drive. When the traffic light turned green, the offender delayed for approximately 10 seconds before slowly proceeding through the intersection via the left lane. Officers then observed the offender's vehicle dangerously weaving between lanes. Officers ordered the offender to stop his vehicle. When they approached the offender, they detected a strong odor of alcohol emanating from the offender's breath. They also observed that his eyes were red and glassy. Officers ordered the offender to exit his vehicle and further observed that he was unsteady on his feet.

The offender failed a field sobriety test and was arrested for DUI. The offender was administered an Intoxilyzer test and his Blood Alcohol Content (BAC) was measured at .138 percent, a reading beyond 0.08 percent which is the level at which is considered legally intoxicated. The offender later posted \$500 bail and was released on 2/16/07. According to the offender, his case is set for trial in State District Court on 8/10/07.

The offender has been on supervised release since 5/23/03 and has struggled to comply with conditions of supervision. Although he completed the drug aftercare program in November 2004, he struggled to comply with the drug testing regime at the Drug Addiction Services of Hawaii, Inc., as evidenced by his admission for failing to submit for drug testing six times from December 2003 to August 2004. A violation report dated 12/7/04 was submitted to the Court recommending that no action be taken at that time. He was also arrested by HPD on 8/18/05 for Assault in the Third Degree and Possessing Intoxicating Liquor While Operating a Motor Vehicle. The offender adamantly denied the charges and was later acquitted of these charges in state court on 8/17/06. The Court was notified of the violations. The offender's lack of a stable residence, lack of stable employment, and lack of family resources in the community contributed to the offender's struggle to comply during the earlier part of his supervision. In spite of his struggle to comply, however, the offender did not test positive for illicit drugs. The offender was always cooperative and had a good attitude with the Probation Office. When questioned about his alcohol problem, the offender readily admits that he lacks the ability to control the amount of alcohol that he consumes. He states that he does not drink alcohol daily but consumes it with co-workers after work once every 2 weeks. He agrees to participate in treatment and drug testing.

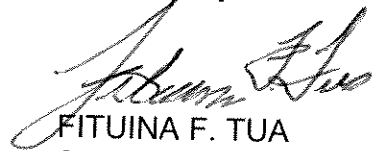
As a result of the reported violations of conduct constituting Driving Under the Influence of Alcohol, and his failure to notify the Probation Office of his arrest, the following sanctions are recommended: return to drug and alcohol treatment to include drug and alcohol testing; and perform up to 50 hours of community service. The recommended modifications of the supervision conditions is appropriate in that it addresses his behavior and is punitive. The offender understood that future violations may result in the revocation of his supervised release.

Prob 12B
(7/93)

4

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modifications of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modifications and have no objections to the modifications.

Respectfully submitted by,



FITUINA F. TUA
Senior U.S. Probation Officer

Approved by:

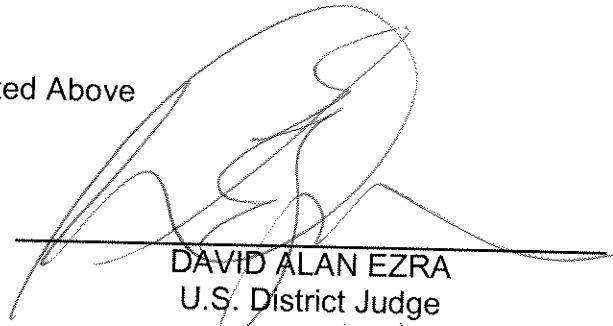


GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 7/5/07

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other



DAVID ALAN EZRA
U.S. District Judge

7/5/07

Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:


[X] To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervised release (mandatory condition).

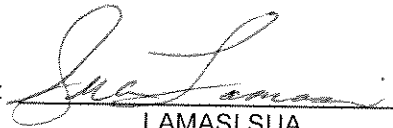
Special Condition No. 1: That the defendant shall participate in and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Special Condition No. 5: That the defendant shall perform up to 50 hours community service as instructed by the Probation Office.

Witness:


FITUINA F. TUA
Senior U.S. Probation Officer

Signed:


LAMASI SUA
Supervised Releasee

7/2/07
Date